SINGLE BENCH

(4)

(2)

CF1002

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION (C) NO. 125 /2006

PETITIONER

Smt. Lilawati Gupta,
W/o Basant Prasad Gupta,
Aged about 50 years,
Through Special Power of Attorney
Holder Shri Basant Prasad Gupta,
Aged about 55 years, Occupation-
Cultivation, R/o Village-Bhaiyathan,
Tah.-Surajpur, District-Sarguja (C.G.)

23/1/06
Rakesh Dubey
13/12/06

VERSUS

RESPONDENTS

1. State of M.P. (Now C.G.),
Through Collector,
Sarguja at Ambikapur,
District-Sarguja (C.G.)

RECEIVED-COPY
13/12/06
CLERK to A. G. BILASPUR

2. Krishna Dev Singh,
S/o Not Known,
Aged about 50 years,
Police Constable,
Police Station-Surajpur,
Tahsil-Surajpur,
District-Sarguja (C.G.)

WRIT PETITION UNDER ARTICLES ~~226/227~~ 227 Const. OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS, CERTIORARI, PROHIBITION AND FOR OTHER SUITABLE WRIT OR WRITS, ORDER OR ORDERS, DIRECTION OR DIRECTIONS.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(39)

मामला क्रमांक ....W.P.(C).No.125/07 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	29.1.2007 Shri Manindra Shrivastava, Sr. Advocate with Shri Afroz Khan, Advocate for the petitioner. Heard. This petition is directed against the order dated 6.9.2006 passed by learned 2nd Additional District Judge, Sarguja whereby the application of the petitioner filed under Order 9 Rule 9 read with Order 17 Rule 2 of CPC for restoration of Civil Suit No.2A/05 has been rejected. From the documents annexed with this petition it appears that on 16.6.2006 Civil Suit No.2A/05 was fixed for recording of evidence of the plaintiff and on that date a prayer was made by the attorney of plaintiff for adjournment. The said prayer was rejected by the court below and opportunity of adducing evidence by the plaintiff was closed. Consequently, the suit was dismissed under Order 17 Rule 3(b) of the CPC and accordingly, a decree was drawn. The petitioner instead of preferring an appeal against the above order moved an application under Order 9 Rule 9 read with Order 17 Rule 2 of CPC for restoration of civil suit, which was rejected by the impugned order with an observation that where a suit is dismissed under Order 17 Rule 3(b) of CPC, the provisions of Order 9 Rule 9 of CPC for restoration of suit are not attracted and the remedy available to the plaintiff is to file a regular civil appeal before the High Court.	

P.T.O.

XI-HC-78

(40)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Learned Sr. Advocate for the petitioner submits that even if the suit is dismissed under Order 17 Rule 3(b) of CPC, the provisions of Order 9 Rule 9 are attracted, as the scope of Order 9 Rule 9 is exhaustive. Since the suit was not dismissed on merit, therefore, the court below ought to have exercised the jurisdiction under Order 9 Rule 9 of CPC and restored the suit. I have heard learned counsel for the petitioner. I have perused the order dated 16.6.2006 vide which suit was dismissed under Order 17 Rule 3(b) of CPC and the impugned order whereby the application for restoration of suit has been dismissed. Considering the reasons assigned by the court below for dismissing the application filed under Order 9 Rule 9 read with Order 17 Rule 2 of CPC, which is on the basis of correct appreciation of law applicable in the circumstances of the case, no case is made out for interference by this Court under Article 227 of the Constitution of India. The petition being devoid of substance liable to be dismissed and it is hereby dismissed. **Sd/-** **Dhirendra Mishra** **Judge**	

P.T.O.